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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
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In the Matter of)
WESTERN WIRELESS CORPORATION)
Petition For Designation as an)
Eligible Telecommunications Carrier for the)
Pine Ridge Reservation in South Dakota)
Federal-State Joint Board on Universal Service)

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CC Docket No. 96-45

COMMENTS OF
FORT RANDALL TELEPHONE COMPANY d/b/a
MOUNT RUSHMORE TELEPHONE COMPANY

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March 12, 2001

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**COMMENTS OF
FORT RANDALL TELEPHONE COMPANY d/b/a/
MOUNT RUSHMORE TELEPHONE COMPANY**

Fort Randall Telephone Company d/b/a Mount Rushmore Telephone Company hereby submits its comments in response to the Petition for Designation as an Eligible Telecommunications Carrier ("ETC") of Western Wireless Corporation and WWC License, LLC (collectively "Western Wireless"), as provided for in Public Notice, DA01-278. For the reasons more fully set forth below, the Commission should not proceed with the Western Wireless petition because Western Wireless has initiated a petition for statewide designation as an ETC before the South Dakota Public Utilities Commission ("SDPUC"). Review of that petition is now pending before the South Dakota Supreme Court.¹

1. Introduction.

Fort Randall Telephone Company ("Fort Randall") is a local exchange carrier that provides local exchange service in several exchanges in South Dakota, including an area of

¹ *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Case Nos. 21510, 21521 and 21525 (South Dakota Supreme Court).

approximately twenty square miles within the Pine Ridge Reservation (the "Reservation").² Fort Randall Telephone is a rural telephone company.³ Fort Randall d/b/a Mount Rushmore Telephone Company ("Mount Rushmore") provides service to approximately 45 access lines on the Reservation.

Western Wireless has previously initiated a proceeding under Section 214(e)(2) before the SDPUC, requesting statewide designation as an ETC. Western Wireless' request to the SDPUC included the area of the Reservation for which Western Wireless now requests ETC designation from the Commission. The SDPUC denied Western Wireless' request⁴ without reaching the issue of whether designating Western Wireless as an ETC in areas served by rural telephone companies was in the public interest under Section 214(e)(2).⁵ Western Wireless appealed the SDPUC decision both to the Sixth Judicial Circuit Court for Hughes County, South Dakota,⁶ and to the Commission when it requested preemption of the SDPUC decision by the

² The exchange facilities used by Fort Randall Telephone Company d/b/a Mount Rushmore Telephone Company to provide service on this portion of the Reservation were acquired from US West Communications. See Memorandum Opinion and Order, Petition of Accent Communications, Inc., et al., DA 96-570, AAD 95-124 (April 11, 1996).

³ See 47 U.S.C. § 153(37) (defining "rural telephone company").

⁴ *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, SDPUC Docket No.: TC98-146, FINDINGS OF FACT AND CONCLUSIONS OF LAW, NOTICE OF ENTRY OF ORDER (May 19, 1999).

⁵ Section 214(e)(2) states:

DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.--

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible Telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

⁶ *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Civ #99-235 (March 22, 2000) (Findings of Fact, Conclusions of Law).

Commission.⁷ The Commission denied the request for preemption pending the outcome of the appeal.⁸ The judicial appeal remains pending before the South Dakota Supreme Court.

2. The Commission Should Not Proceed With The Western Wireless' Petition Because Western Wireless Has Initiated A Proceeding Before The SDPUC.

In the *Twelfth Report and Order*,⁹ the Commission established clear limitations intended to prevent “forum shopping” and the added costs and confusion that would result from duplication of efforts in designation proceedings before both the Commission and state commissions. The *Twelfth Report and Order* reads in part:

A carrier may avail itself of this process when it has not initiated a designation proceeding before the affected state commission. In order to avoid the potential for “forum-shopping” and the costs and confusion caused by duplication of efforts between this Commission and state commissions, we will not make a jurisdictional determination under Section 214(e)(6) if the affected state commission has initiated a proceeding in response to a designation request under Section 214(e)(2).

Id. at ¶ 132. Western Wireless’ request for designation violates this limitation, and the Commission’s underlying rationale. Accordingly, the Commission should not make a jurisdictional determination or proceed with Western Wireless’ petition.

Clearly, Western Wireless is seeking to avoid a SDPUC determination of whether designation of a second ETC in the portions of the Reservation served by South Dakota rural telephone companies is in the “public interest” under Section 214(e)(2). Rather, Western Wireless is “forum shopping” in this effort to obtain a determination of “public interest” by the

⁷ *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No.: 96-45 (filed January 19, 2001).

⁸ *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No.: 96-45, Declaratory Ruling, FCC 00-248 (August 10, 2000).

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, TWELFTH REPORT AND ORDER,, AND FURTHER NOTICE OF PROPOSED RULEMAKING, 15 FCC Rcd. 12208 (June 8, 2000) (“*Twelfth Report and Order*”).

Commission, under Section 214(e)(6), rather than by the SDPUC, under Section 214(e)(2). It is also clear that duplicate and costly efforts will be involved in undertaking both this proceeding and possible further proceedings before by the SDPUC, following the decision of the South Dakota Supreme Court.

Further, Western Wireless' efforts to argue that this proceeding does not duplicate the proceeding before the SDPUC must be rejected for two reasons. First, the limitation on Commission designation petitions contained in the *Twelfth Report and Order* does not make any exception for different services to be proposed for designation before a state commission and this Commission. Such an exception should not be adopted because it would allow carriers to evade the limitation in the *Twelfth Report and Order*. If a carrier can evade the limitation set forth in the *Twelfth Report and Order* merely by altering a few of the terms of its proposed universal service offerings, duplicate proceedings could occur whenever a carrier wished. At that point, the limitation would lack any substantial effect.

Second, the fixed wireless services proposed by Western Wireless in this proceeding are essentially the same as the fixed wireless services proposed before the SDPUC. While Western Wireless has contractual arrangements with the Oglala Sioux Tribe that were not a part of the fixed wireless service proposed for designation before the SDPUC, the services provided to customers are virtually identical, using the same equipment, and providing essentially the same features. Any differences between the service proposed to the SDPUC and to the Commission would not justify a finding that the services were significantly different, even if the limitations in the *Twelfth Report and Order* recognized an exception for different services.

Accordingly, this request by Western Wireless violates the limitation and rationale reflected in the *Twelfth Report and Order*, and the Commission not proceed with Western Wireless' petition.

3. Western Wireless Has Made No Showing That A Disaggregation Of Mount Rushmore's Service Area Would Be Appropriate.

Western Wireless' proposal for ETC designation for the area within the Reservation would also require a disaggregation of Mount Rushmore's service area¹⁰, and the service areas of Golden West and Great Plains. Section 214(e)(5) requires that the service area of an additional ETC match the service area (study area) of a rural telephone company "unless and until" that service area is changed by both the Commission and the state. Section 214(e)(5) reads in part:

The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board ... , establish a different definition of service area for such company.

(Emphasis added.) Subsection 214(e)(5) recognizes and addresses both state determinations of service areas and Commission determinations of service areas (under subsection 214(e)(6)). It also requires participation of both the Commission and states to change a service area in an area served by a rural telephone company, without any distinction based on whether a State is considering designation of a second ETC or the Commission is considering designation of the second ETC. As a result, the disaggregation of Mount Rushmore's service area, which would be needed to grant the Western Wireless petition, cannot be accomplished without participation by the SDPUC.

¹⁰ The facilities used to provide service on this portion of the Reservation are included in the Study Area of Fort Randall Telephone Company. See Memorandum Opinion and Order, DA 96-570, AAD 95-124.

Western Wireless has not even addressed the issue of disaggregation of Mount Rushmore's service area (or the service areas of Golden West or Great Plains), much less demonstrated that such a disaggregation should be agreed to by both the Commission and the SDPUC.¹¹

4. The Designation Of Western Wireless As A Second ETC Will Reduce Essential Universal Service Support For Mount Rushmore.

As previously noted, Mount Rushmore serves approximately 45 access lines in the portion of the Reservation within Mount Rushmore's service area. The portion of Mount Rushmore's service area within the Reservation is approximately 26 miles from the host central office and receives switching through a "remote" switching module. The gross embedded plant investment for providing service to the area within the Reservation is approximately \$240,360 in total, or approximately \$5,225 per access line. Over the last 12 months, Mount Rushmore undertook a project in this area to convert from analog to digital carrier for expansion and improvement of service to this area. The investment in new plant of approximately \$31,000 improved the quality of service to all of Mount Rushmore's customers in the service area within the Reservation. Along with these improvements customers have access to advanced digital services like ISDN, T1 access and eventually DSL. The school located in that part of the Reservation served by Mount Rushmore presently has T1 access.

Mount Rushmore provides extended area service (flat rate calling) from this portion of the Reservation to Rapid City, and most of the southern portion of the Black Hills region. In addition, as a result of a request by the Reservation, Mount Rushmore and Golden West are completing network changes that will give customers located on the Reservation to have toll free

¹¹ See 47 C.F.R. § 54.207(b) and (d)(2).

calling within the entire reservation. Once completed, the approximate local calling area will have a diameter of 100 miles.

Loss of universal service support for providing service to this area will make the difficult economics far worse, and will result in the addition of revenue requirement for all other customers of Mount Rushmore, including the majority of customers who do not reside on the Reservation. These factors underscore the public interest obstacles that will result from granting ETC designation to Western Wireless, and the legitimate interests of the SDPUC.

5. Conclusion.

For these reasons, the Commission should not proceed with this request while the matter remains pending before the SDPUC.

Dated: March 12, 2001.

Respectfully submitted,

MOSS & BARNETT
A Professional Association

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Telephone Company

CERTIFICATE OF SERVICE

I, Kim R. Manney, of Moss & Barnett, P.A., 4800 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402, do hereby certify that a copy of the foregoing "Comments of Fort Randall Telephone Company d/b/a Mount Rushmore Telephone Company" was served on this 12th day of March, 2001, by first class, U.S. Mail, postage prepaid to the following parties:

/s/ Kim R. Manney
Kim R. Manney

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AFFIDAVIT

STATE OF MINNESOTA)
)ss.
COUNTY OF CHIPPEWA)


BRUCE HANSON, being first duly sworn on oath, states as follows:

1. I am the Treasurer of Fort Randall Telephone Company.
2. Fort Randall Telephone Company, d/b/a Mount Rushmore Telephone Company ("Mount Rushmore") provides service to a portion of the Pine Ridge Reservation (the "Reservation"), including approximately 20 square miles. Mount Rushmore provides service to approximately 45 access lines on the Reservation, including approximately 20 access lines receiving enhanced Lifeline support under Rule 54.400(e).
3. The portion of Mount Rushmore's service area within the Reservation is approximately 26 miles from the host central office located in Hermosa, South Dakota, and receives switching through a "remote" switching module located within the Reservation.
4. The gross embedded plant investment for providing service to the area within the Reservation is approximately \$240,360, or approximately \$5,225 per access line.
5. Over the last 12 months, Mount Rushmore undertook a project in this area to convert from analog to digital carrier for expansion and improvement of service to this area. The investment in new plant of approximately \$31,000 improved the quality of service to all of Mount Rushmore's customers in the service area within the Reservation.
6. Along with these improvements, Mount Rushmore customers located on the Reservation have access to advanced digital services, including ISDN, T1 access and will eventually have access to DSL. The school located in that part of the Reservation served by Mount Rushmore presently has T1 access.

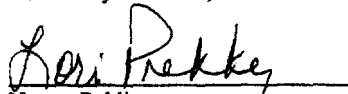
7. Mount Rushmore provides extended area service (flat rate calling) from this portion of the Reservation to Rapid City, and most of the southern portion of the Black Hills region.

8. In addition, as a result of a request by the Reservation, Mount Rushmore is working with Golden West Telecommunications Co-op, Inc. to complete network changes that will allow customers located on the Reservation to have toll free calling throughout the entire Reservation. Once completed, the local calling area of Mount Rushmore customers on the Reservation will have a diameter of approximately 100 miles.

FURTHER AFFIANT SAYETH NOT.


BRUCE HANSON

Subscribed and sworn to before me
this 9th day of March, 2001.


Notary Public

